

ORIGINAL

GENERAL COUNSEL
OF COPYRIGHT

Before the
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LIBRARY OF CONGRESS
Washington, D.C.

JUL 30 1998

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In the Matter of :
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Mechanical and Digital : Docket No. 96-4 CARP DPRA
Phonorecord Delivery Rate :
Adjustment Proceeding :
- - - - - X

NOTICE OF INTENT TO PARTICIPATE

The American Society of Composers, Authors and Publishers ("ASCAP") hereby files its notice of intent to participate in the above-captioned proceeding, in accordance with the Copyright Office's Notice of June 24, 1998, 63 Fed. Reg. 35984 (July 1, 1998).

ASCAP is the oldest and largest musical performing rights society in the United States with a repertory of millions of copyrighted musical compositions and more than 76,000 songwriter and publisher members. ASCAP is also affiliated with 58 foreign performing rights societies around the world and licenses the repertories of those societies in the United States.

Section 106 of the Copyright Act grants copyright owners certain exclusive rights in their works. These rights include the right to perform copyrighted works, including musical

compositions, publicly, the right to reproduce copyrighted works in copies or phonorecords, and the right to distribute copies or phonorecord records of copyrighted works. This proceeding involves only the right of reproduction and distribution of specific copyrighted works under Section 115 -- digital phonorecord deliveries.

In 1995, Congress amended Section 115, which deals only with the reproduction and distribution rights, to provide that reproduction and distribution by means of a digital transmission of a musical work was covered under Section 115 "regardless of whether the digital transmission is also a public performance of . . . any nondramatic musical work embodied therein." In the legislative history of that amendment, Congress said that it did not intend to limit any existing rights of the copyright owners of musical works, including any limitation on the right of public performance under Section 106(4). S. Rep. No. 104-128, 104th Con., 1st Sess. 16-17, 37 (1995).

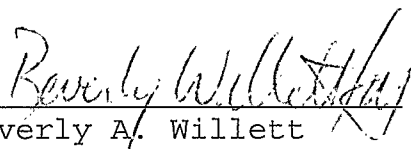
ASCAP will participate in this proceeding only if, and only to the extent that, it is necessary to ensure that any rates and regulations adopted by this Office pursuant to a proposal by the parties or a determination made by a Copyright Arbitration Royalty Panel ("CARP") recognize that Section 115 does not apply

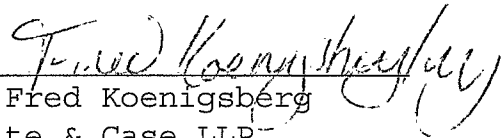
to any right of public performance in digital transmissions, and hence that no rate for public performances of digital transmissions is set pursuant to Section 115.

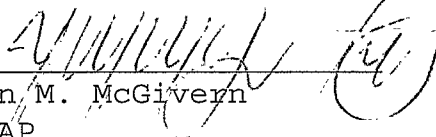
Finally, many of ASCAP's publisher members are members of the National Music Publishers' Association, Inc. and are also represented by The Harry Fox Agency, Inc., both of which are parties to this proceeding. Those entities, and not ASCAP, are authorized to deal with the reproduction and distribution rights in copyrighted musical compositions. Hence ASCAP wishes to be clear that it will not participate in this proceeding in any way which deals with these rights, but rather is participating only to safeguard its members' right of public performance, which is not otherwise represented in this proceeding.

Respectfully submitted,

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS


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